



## MEMORANDUM

To: House Commerce Committee

From: Wendy Block, Director of Health Policy and Human Resources

Subject: Chamber Opposes HBs 4085-86; Questions Practicality of Entire Legislative Package

Date: February 5, 2009

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The purpose of this memorandum is to express the Michigan Chamber's position on HBs 4093-94, legislation to require employers receiving tax credits, state financing and loans and other funds to give hiring preference to Michigan workers. Specifically, we are opposed to HBs 4085 and 4086 and have a significant number of questions regarding the practicality of many of the provisions found throughout this package of bills.

Our concerns are as follows:

1. We are **opposed to HB 4085** because it holds unionized employers to a lower standard than nonunionized employers by requiring only non-unionized employers to hire 100% Michigan residents for DMB projects. The language explicitly exempts employers who are signatory to collective bargaining agreements that allow for the portability of employees on an interstate basis. If the Legislature is sincere in its efforts, the legislation should place Michigan residents on ALL state jobs and projects, regardless of union affiliation. Federal labor law specifically prohibits states from making rules that favor unions over non-union employees. Allowing an exemption for unionized employers and not non-union employers violates these federal labor law rules (*UAW v. C.M. Smillie Company*, 139 Mich.App. 731 (1984)). Suggested Amendment:
  - HB 4085 - Amend page 2, line 3 after "contract." by striking the remainder of the section.
2. We are **opposed to HB 4086** because it would disbar construction firms from future state contracts if found to be in violation of Michigan's Prevailing Wage Act. Specifically, our concern is that even a minor, technical violation could result in disbarment. We agree with this legislation in so far as it penalizes contractors who knowingly, willingly and consistently violate the Prevailing Wage Act but feel the legislation should be amended to distinguish these violations from instances where a reputable contract may have mistakenly misclassified an employee on a one-time basis. Suggested Amendments:
  - HB 4086 – Amend page 2, line 3 after "HAS" by inserting "KNOWINGLY".
  - HB 4086 – Amend page 2, line 9 after "NOT" by inserting "KNOWINGLY".
3. We also have **questions and concerns regarding the resident-only hiring requirements throughout this legislative package**. While we agree that Michigan companies should be awarded financing, grants, loans, projects, etc. when all things are equal, there may be instances where hiring only Michigan residents may not be practical – or even Constitutional. Specifically:

- Labor law attorneys advising us on this legislation say the state can **only** make a preference for hiring state citizens if all of the money for the project comes solely from state sources. If any money comes from federal sources the hiring preference violates the US Constitution's commerce clause. (A lawsuit challenging the statute's constitutionality could be brought under 42 USC 1983 which allows for the recovery of attorney fees by the successful plaintiff.) Have you looked into the Constitutionality of this legislative package?
- How will this "Michigan-workers-only" requirement impact the MEDC's efforts to attract out-of-state or out-of-country companies through the use of MEGA credits and other tax incentives and grants?
- Will this legislation make employers less likely to apply for the specific tax credits, state financing, loans and other sources of funding given that the penalties of this legislation may result in revocation -- or even possible repayment -- of these funds if the employer is found to be in noncompliance?
- Should a company be awarded a bid on, for example, a state construction project just because that company only hires Michigan residents? Shouldn't the State also take into consideration who is best equipped to handle a given job and/or the project costs associated with each bid? Wouldn't this be wise given the state's tight fiscal situation?
- Has the Legislature looked into instances where state agencies have awarded bids to out-of-state companies (e.g., DMB paying an Ohio company double the price of a Michigan company to pulverization versus shred state documents)? Why aren't state agencies and authorities implementing and pursuing Michigan-worker-first requirements today?

Thank you for the opportunity to submit these comments and amendments. Please do not hesitate to contact me if you have further questions at (517)371-7678 or [wblock@michamber.com](mailto:wblock@michamber.com).